

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:
Ward Transformer Superfund Site,
Operable Unit 1

Proceeding Under Section
106(a) of the Comprehensive
Environmental Response,
Compensation, and Liability
Act of 1980, as amended,
42 U.S.C. § 9606(a)

U.S. EPA
DOCKET NO: CERCLA-04-2011-3769

RESPONDENTS
(Listed in Appendix 4)

UNILATERAL ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN/REMEDIAL ACTION FOR OU1



10839185

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FOR REMEDIAL DESIGN/REMEDIAL ACTION FOR OU1

I. INTRODUCTION AND JURISDICTION

This Unilateral Administrative Order For Remedial Design/Remedial Action for OU1 (Order) directs Respondents to develop the Remedial Design (RD) for the remedy described in the Record of Decision (ROD) dated September 29, 2008, for Operable Unit 1 (OU1) of the Ward Transformer Superfund Site, located in Raleigh, Wake County, North Carolina (Site), and to implement the Remedial Design (RD) by performing the Remedial Action (RA), Operation and Maintenance, and Performance Monitoring. This Order is issued to Respondents by the United States Environmental Protection Agency (EPA) under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9606(a). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), further delegated to EPA Regional Administrators by EPA

Delegation No. 14-14-B, and re-delegated to the Region 4 Superfund Division Director by Regional Delegation 14-14-B.

II. PARTIES BOUND

A. This Order applies to and shall be binding upon Respondents, their directors, officers, employees, agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all activities required by this Order. No change in ownership, corporate status, or other control of any Respondents shall alter the Respondents' responsibilities under this Order.

B. Respondents shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondents' property rights, stocks, or assets are transferred. Respondents shall provide a copy of this Order to all contractors, sub-contractors, laboratories, and consultants retained to perform any Work under this Order, within five (5) days after the effective date of this Order, or on the date such services are retained, whichever date occurs later. Respondents shall also provide a copy of this Order to each person representing any Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms of this Order. Notwithstanding the terms of any contract, Respondents are responsible for ensuring that their contractors and subcontractors and agents perform the Work contemplated herein in accordance with this Order.

C. With regard to the activities undertaken pursuant to this Order, each contractor and subcontractor and agent shall be deemed to be related by contract to the Respondents within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

D. Each Respondent that now or hereafter owns property located within OU1 at the Site shall, within 15 days after the effective date of this Order or within 15 days after acquiring title to such property, record a copy or copies of this Order in the appropriate office where land ownership and transfer records are filed or recorded, and shall ensure that the recording of this Order is indexed to the titles of each and every property located within OU1 at the Site owned by any Respondent so as to provide notice to third parties of the issuance and terms of this Order with respect to those properties. Respondents shall, within 10 days after recording the Order, send notice of such recording and indexing to EPA.

E. Not later than 60 days prior to any transfer of any real property interest in any property included within OU1 at the Site, Respondents shall submit a true and correct copy of the transfer documents to EPA, and shall identify the transferee by name, principal business address and effective date of the transfer.

III. DEFINITIONS

Unless noted to the contrary, the terms of this Order shall have the meaning assigned to those terms pursuant to CERCLA or any regulation promulgated under CERCLA. Whenever the

terms listed below are used in this Order and Appendices attached hereto, the following definitions shall apply:

- A. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- C. "EPA" shall mean the United States Environmental Protection Agency.
- D. "Facility" shall have the meaning defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- E. "Hazardous Substance" shall mean any substance meeting the definition provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- F. "Institutional Controls" or "ICs" shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that:
(1) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (2) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.
- G. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- H. "NCDENR" shall mean the North Carolina Department of Environment and Natural Resources and any successor departments or agencies of the State.
- I. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- J. "Operable Unit One" or "OU1" shall mean the areas downgradient from the Ward Transformer plant and includes Reaches B, C, and D; Brier Creek Reservoir; Brier Creek; Lake Crabtree; and lower Crabtree Creek.

K. "Operation and Maintenance" or "O&M" shall mean all operation and maintenance activities required by the ROD, the Scope of Work, and the Final Operation and Maintenance Plan developed by Respondents and approved by EPA pursuant to this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

L. "Paragraph" shall mean a portion of this Order identified by a capital letter.

M. "Parties" shall mean the United States of America and Respondents.

N. "Performance Monitoring" shall mean all performance monitoring activities required by the ROD, the Scope of Work, and the Performance Standards Verification Plan developed by Respondents and approved by EPA, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions), to ensure the effectiveness of the implemented remedy and to confirm over time that all Performance Standards are met.

O. "Performance Standards" shall mean those cleanup levels, treatment standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD and Scope of Work, and, except for cleanup levels and treatment standards, those identified by EPA during the Remedial Design that the Remedial Action and all other Work required by this Order must attain and maintain.

P. "Pollutant or Contaminant" shall mean any substance defined in Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

Q. "Proprietary Controls" shall mean easements or covenants running with the land that (1) limit land, water, or resource use and/or provide access rights and (2) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office.

R. "Reach A" shall mean the section of the unnamed tributary to Little Brier Creek that starts at the former Ward Transformer storm water treatment plant outfall, continues west-southwesterly for approximately 2,100 ft (0.4 mile), and terminates at the first culvert beneath the first I-540 crossing.

S. "Reach B" shall mean the section of the unnamed tributary to Little Brier Creek, downstream of the Ward Transformer plant, starting at the exit of the culvert on the west side of I-540, continuing west-southwesterly for approximately 1,500 ft (0.3 mile), and terminating at the culvert beneath the Lumley Road crossing.

T. "Reach C" shall mean the section of the unnamed tributary to Little Brier Creek that starts from the terminus of Reach B, continues south-southwesterly for approximately 2,100 ft (0.4 mile) to its confluence with Little Brier Creek proper, and terminates at the culvert beneath the second I-540 crossing.

U. "Reach D" shall mean the section of Little Brier Creek that starts at the exit of the culvert beneath the second I-540 crossing (the terminus of Reach C) and continues southerly for approximately 4,200 ft (0.8 mile) to its mouth at Brier Creek Reservoir, located in the vicinity of the culverts beneath the Globe Road crossing.

V. "Record of Decision" or "ROD" shall mean the EPA Record of Decision for OU1 at the Site, which was signed on September 29, 2008, by the Superfund Division Director, EPA Region 4, including all attachments thereto. The ROD is attached hereto as Appendix 1 and is incorporated herein by reference.

W. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondents to implement the final plans and specifications submitted by Respondents pursuant to the Remedial Design Work Plan approved by EPA, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

X. "Remedial Design" or "RD" shall mean all studies, investigations or surveys conducted, and plans and specifications prepared, that are necessary to implement the Remedial Action, Operation and Maintenance, and Performance Monitoring activities required by the ROD, the Scope of Work, and the Remedial Design Work Plan developed by Respondents and approved by EPA pursuant to this Order, including any additional activities required by Sections X (EPA Periodic Review), XI (Additional Response Actions), XII (Endangerment and Emergency Response), and XIII (EPA Review of Submissions).

Y. "Respondents" shall mean those Parties identified in Appendix 4.

Z. "Section" shall mean a portion of this Order identified by a Roman numeral.

AA. "Site" shall mean the Ward Transformer Superfund Site, located along Mount Herman Road, near the Raleigh Durham International Airport in a predominantly industrial area of Raleigh, Wake County, North Carolina, as generally depicted on the map attached hereto as Appendix 3. The Site includes the former Ward Transformer plant and surrounding properties and areas downstream from the plant, including unnamed tributaries to Little Brier Creek (Reach A, B, and C); Little Brier Creek (Reach D); Brier Creek Reservoir; Brier Creek; Lake Crabtree; lower Crabtree Creek and encompasses the areal extent of contamination therefrom.

BB. "State" shall mean the State of North Carolina.

CC. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring at the Site. The SOW is attached hereto as Appendix 2 and is incorporated herein by reference.

DD. "United States" shall mean the United States of America, including the Department of Justice and EPA.

EE. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous waste" under N.C.G.S.A. § 130A-290(a)(8).

FF. "Work" shall mean all activities Respondents are required to perform under this Order, including the Remedial Design, Remedial Action, Operation and Maintenance, Performance Monitoring, and any schedules or plans required to be submitted pursuant thereto.

IV. FINDINGS OF FACT

A. The Site is located along Mount Herman Road, near the Raleigh Durham International Airport in a predominantly industrial area of Raleigh, Wake County, North Carolina. The Site includes the former Ward Transformer plant and surrounding properties and areas downstream from the plant, including unnamed tributaries to Little Brier Creek (Reach A, B, and C); Little Brier Creek (Reach D); Brier Creek Reservoir; Brier Creek; Lake Crabtree; lower Crabtree Creek, and encompasses the areal extent of contamination therefrom.

B. OU1, the subject of the ROD and this Order, addresses soil, sediment, surface water, and fish in areas downgradient from the Ward Transformer plant, and includes Reaches B, C, and D; Brier Creek Reservoir; Brier Creek; Lake Crabtree; and lower Crabtree Creek.

C. The Ward Transformer plant was built on approximately 11 acres of previously undeveloped land (Ward Property) in 1964. Ward Transformer Company, Inc. (Ward Transformer) is the former owner and operator and current owner of the Ward Property. Ward Transformer conducted operations from 1964 until 1997, when Ward Transformer Sales and Service, Inc. (Ward Sales) became operator. Ward Sales continued the same operations until 2007, when all operations ceased at the plant. While operating, the companies manufactured, repaired, reconditioned, rebuilt, purchased, and sold transformers, capacitors, switchgear, and other similar types of electrical equipment. During that time, hazardous substances, including polychlorinated biphenyls (PCBs) were disposed of at the Site.

D. During both Ward Transformer's and Ward Sales' operation of the plant, the Respondents sent transformers to the Site for resale, repair, or consignment. These transformers and their parts contained PCBs. By contract, agreement, or otherwise, the Respondents arranged with

Ward Transformer or Ward Sales for the disposal of these transformers or their parts. The Respondents also arranged with Ward Transformer or Ward Sales for the disposal of oil contaminated with PCBs contained within the transformers or their parts. Respondents that sent transformers to the Site for repair or on consignment retained title to them.

E. EPA and the North Carolina Department of Environment and Natural Resources (NCDENR) began an investigation of the Site in 1978 as a result of Ward Transformer Company's involvement in the release of used oil containing PCBs along roadsides in North Carolina. During the time that the roadside spills were being investigated in 1978 and 1979, EPA collected a number of samples at and downstream from the Ward Transformer plant. PCB contamination was found in the soil at the Ward Transformer plant, in the water and sediment in the plant's storm water lagoon, and in the water and sediments along the surface water pathway draining the plant.

F. In 1993, EPA conducted a very limited removal assessment at the Site and concluded that further remedial investigations of the Site were necessary.

F. Between 1994 and 1997, NCDENR completed a Preliminary Assessment (PA), Site Inspection (SI), and Expanded Site Inspection (ESI) of the Site. The results confirmed the presence of PCBs in surface soils inside and outside of fenced areas of the Ward Transformer plant and along a surface water pathway downstream from the plant.

G. EPA proposed adding the Site to the National Priority List (NPL) on September 5, 2002, (67 Fed. Reg. 56794), pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as set forth in the National Contingency Plan (NCP) at 40 C.F.R. Part 300. The Site was finalized on the NPL on April 30, 2003.

H. In April 2003, EPA commenced a Remedial Investigation and Feasibility Study (RI/FS), pursuant to CERCLA and the NCP, at 40 C.F.R. Part 300.430.

I. A Remedial Investigation (RI) Report for the Site was completed in September 2004 (2004 Site-wide RI Report). The 2004 Site-wide RI Report confirmed PCB contamination of surface and subsurface soil and sediments on the Ward Property and PCB soil contamination on several adjacent parcels, currently owned by Reward Properties, LLC; Reward Statesville, LLC; Ward Ventures, LLC and B&B Apartments, LLC. Specifically, soil samples collected near the front of the Ward Transformer plant's main building contained PCBs at levels as high as 160 parts per million (ppm). Soil with PCB concentrations of up to 1,700 ppm were found in the western portion of the plant where transformers, construction debris, and scrap metal were stored. Soils with PCB concentrations of up to 230 ppm were also discovered in areas outside of the Ward Property leading to the unnamed tributary to Little Brier Creek. Additionally, sediments from the Ward Transformer plant's storm water lagoon contained levels of PCBs as high as 2,900 ppm. The 2004 Site-wide RI Report also revealed PCB contamination in sediment samples collected from the unnamed tributary to Little Brier Creek, Brier Creek Reservoir, and Lake

Crabtree, as well as PCB contamination in fish or crayfish tissue samples collected from the unnamed tributary to Little Brier Creek, Brier Creek Reservoir, Brier Creek, and Lake Crabtree.

J. Based on the 2004 Site-wide RI and a removal assessment conducted on August 9, 2004, EPA determined that an unacceptable risk existed at the Site which necessitated a time-critical removal action. On September 14, 2004, EPA issued an Enforcement Action Memorandum memorializing EPA's decision to implement a time-critical removal at the Site.

K. The Agency for Toxic Substances and Disease Registry issued a Public Health Assessment for the Site in March 2005, which classified the Site as a public health hazard because exposure to PCBs in fish and/or soil could increase the risk for cancer or adverse noncancer health effects if not reduced and/or prevented.

L. In July 2007, EPA completed the "Ward Transformer Site Remedial Investigation Report for Operable Unit 1, Groundwater and Downstream Reaches" (2007 OU1 RI Report), and the "Ward Transformer Site Feasibility Study Report for Operable Unit 1, Downstream Reaches" (OU1 Feasibility Study). The 2007 OU1 RI Report confirmed the presence of PCBs in sediment samples collected in Reaches A, B, C, and D; Brier Creek Reservoir; Brier Creek; and the beginning of Lake Crabtree; as well as site contaminants in aquatic biota (fish and crayfish) tissue collected in Reaches B, C, and D; Brier Creek Reservoir; Brier Creek; Lake Crabtree; Crabtree Creek; and the Neuse River. The Baseline Human Health Risk Assessment, part of the 2007 OU1 RI Report, concluded that there are in general unacceptable cancer risks and non-cancer risks (e.g., adverse health effects to immune system, skin, eyes) associated with consumption of fish from Brier Creek Reservoir, Lake Crabtree, and Crabtree Creek. The Baseline Ecological Risk Assessment, which is also part of the 2007 OU1 RI Report, concluded that the maximum concentrations detected in a variety of environmental media are at levels that are likely to pose risk to ecological receptors such as benthic organisms (e.g., snails, crayfish, mussels), fish, aquatic organisms, minks, herons, raccoons, deer mice, and robins.

M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the OU1 Feasibility Study and of the proposed plan for remedial action for OU1 on August 6, 2007, in a major local newspaper of general circulation and provided opportunity for public comment on the proposed remedial action.

N. The decision by EPA on the remedial action to be implemented for OU1 at the Site is embodied in a Record of Decision (ROD), executed on September 29, 2008, on which the State concurred. The ROD includes a summary of responses to the public comments received. The ROD is supported by an administrative record that contains the documents and information upon which EPA based the selection of the response action. The administrative record is available for public review at EPA's Regional Office in Atlanta, Georgia and at the North Regional Library, 7009 Harps Mill Road, Raleigh, North Carolina 27605.

O. As more fully described in the ROD, the selected remedy will require Respondents to: continue or enhance existing North Carolina fish consumption advisories and signs; implement

educational and community outreach programs; conduct pre-excavation sampling of sediment and floodplain soil; conduct a pre-excavation endangered mussel evaluation study; excavate sediment/soil from Reaches B, C, D, and lower Brier Creek; transport sediment/soil off-site for appropriate disposal; restore the Site and stream to pre-remediation conditions; implement Monitored Natural Recovery (MNR) in Brier Creek Reservoir, Lake Crabtree, and lower Crabtree Creek; conduct periodic monitoring of sediment and aquatic biota; implement institutional controls; and conduct Five-year reviews. A more detailed description of the remedy selected can be found in the ROD in Appendix 1.

P. The actions specified in the ROD and required by this Order will protect the public health, welfare, and the environment. The selected remedy is protective of the human health and the environment because PCB-contaminated sediment with concentrations above 1 milligram per kilogram (mg/kg) from Reaches B, C, D, and lower Brier Creek will be removed, therefore reducing potential exposure to contaminated sediment. In addition, the selected remedy will remove any soil with PCB concentrations above 1 mg/kg in the flood plains along Reaches B, C, D, and lower Brier Creek, which will reduce potential exposure to contaminated soil and will eliminate another potential source of PCBs. The selected remedy includes MNR, which will allow natural processes to achieve remediation goals in Brier Creek Reservoir, Lake Crabtree and lower Crabtree Creek. These actions will eventually reduce sediment PCB concentrations within the biologically active zone in Brier Creek Reservoir and Lake Crabtree to levels which will support the reduction of PCB concentrations in fish and other aquatic biota.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

A. The Site constitutes a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. Respondents are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. Each of the Respondents is a "liable party" as defined in Sections 107(a)(1), 107(a)(2) and/or 107(a)(3) of CERCLA, 42 U.S.C. §§ 9607(a)(1), (a)(2) and/or (a)(3).

D. The PCBs found at the Site are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. These hazardous substances have been disposed of and released, are being released, and threaten to be released on, in and from the Site into the surface and subsurface sediments, soils, and waters.

F. The past and present disposal and migration of hazardous substances at and from the Site are "releases" as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

G. The potential for future migration of hazardous substances at and/or from the Site poses a threat of "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

H. The release and threat of release of one or more hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment.

I. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

VI. NOTICE TO THE STATE

On September 29, 2011, prior to issuing this Order, EPA notified NCDENR that EPA would be issuing this Order.

VII. ORDER

Based on the foregoing, Respondents are hereby ordered, jointly and severally, to comply with this Order, including, but not limited to, all Appendices to this Order, all documents incorporated by reference into or to be developed pursuant to this Order, and all schedules and deadlines in this Order, attached to this Order, incorporated by reference into this Order, or to be developed pursuant to this Order.

VIII. WORK TO BE PERFORMED

A. Appendix 2 to this Order is the SOW which sets forth the major tasks that must be completed by Respondents to implement the Work at OU1. The SOW is incorporated into this Order by reference as if fully set forth herein and is therefore both a requirement and an enforceable part of this Order.

B. Respondents shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Respondents shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

C. All aspects of the Work to be performed by Respondents pursuant to this Order shall be under the direction and supervision of a qualified contractor (Supervising Contractor) who shall be a qualified professional engineer or geologist with expertise in hazardous waste cleanups, the selection of which shall be subject to disapproval by EPA. Within 10 days after the effective date of this Order, Respondents shall submit to EPA in writing the name and qualifications of any contractor proposed to be the Supervising Contractor, including primary support entities and staff. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental

Technology Programs,” (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP should be prepared in accordance with the specifications set forth in “EPA Requirements for Quality Management Plans (QA/R-2),” (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed.

D. If EPA disapproves a proposed Supervising Contractor, Respondents shall submit to EPA within 15 calendar days after receipt of EPA's disapproval of the Supervising Contractor previously proposed, a list of contractors, including primary support entities and staff, that would be acceptable to Respondents. EPA shall, after receipt of the list, provide written notice to Respondents of the names of the contractors it disapproves and an authorization to proceed with respect to any of the other contractors. Respondents may then select any contractor from that list that is not disapproved and shall notify EPA of the name of the Supervising Contractor selected within 10 days of EPA's authorization to proceed.

E. If at any time thereafter, Respondents propose to use a different Supervising Contractor for Work at the Site, Respondents shall notify EPA and shall obtain an authorization to proceed from EPA before the new Supervising Contractor performs any work under this Order. Any change in the Supervising Contractor made pursuant to this paragraph shall not excuse any Work, deadlines, or schedules required under this Order.

F. The purpose of the Remedial Design/Remedial Action is to design, construct, operate, maintain, and monitor the performance of the selected remedy to ensure protection of human health and the environment. The Remedial Design (discussed in Paragraph G, below) includes those activities to be undertaken by Respondents to develop the final plans and specifications, general provisions, and special requirements necessary to translate the ROD into the remedy to be constructed during the Remedial Action phase (discussed in more detail in Paragraph H, below). The Remedial Action involves the implementation phase of Site cleanup or actual construction of the remedy. The Remedial Action is based on the Remedial Design to achieve the Performance Standards at the Site. The major tasks that Respondents must complete and the deliverables associated with each task to support the Work are described in the SOW. EPA approval of a task or deliverable shall not be construed as a guarantee of the ultimate adequacy of such a task or deliverable.

G. Remedial Design –

1. Within 45 days after EPA's issuance of an authorization to proceed pursuant to Paragraph C or D above, Respondents shall submit to EPA and the State a work plan for the design of the Remedial Action for OU1 (Remedial Design Work Plan). The Remedial Design Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Remedial Design Work Plan, shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon their approval by EPA, shall be incorporated into and become enforceable under this Order. Within 45 days after EPA's issuance of an

authorization to proceed, Respondents shall also submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, the following items: (a) a Sampling and Analysis Plan [including, but not limited to, a Quality Assurance Project Plan (QAPP) in accordance with Section XV (Quality Assurance, Sampling and Data Analysis)]; (b) a preliminary design submittal; and (c) a pre-final/final design submittal. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

3. Upon approval of the Remedial Design Work Plan and the Sampling and Analysis Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal to EPA and the State of the Health and Safety Plan for all field activities, Respondents shall implement the Remedial Design Work Plan. Respondents shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (EPA Review of Submissions). Unless otherwise directed by EPA, Respondents shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan and the Sampling and Analysis Plan.

4. The preliminary design submittal shall include, at a minimum, the following: (a) results of data acquisition activities; (b) a design criteria report; (c) preliminary plans and specifications in outline form; (d) a plan for satisfying permitting requirements; (e) a preliminary schedule; and (f) any other submittals specified in the preliminary design section of the SOW.

5. The pre-final/final design submittal shall include, at a minimum, the following: (a) complete design analyses; (b) final plans and specifications; (c) a final construction schedule; (d) a Performance Standard Verification Plan; (e) a construction cost estimate; (f) an Operation and Maintenance Plan; and (g) any other submittals specified in the SOW.

H. Remedial Action –

1. Concurrent with the submittal of the pre-final/final design, Respondents shall submit to EPA and the State a work plan for the performance of the Remedial Action for OUI (Remedial Action Work Plan). The Remedial Action Work Plan, and the other deliverables submitted pursuant to or in conjunction with the Remedial Action Work Plan, shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal and, upon their

approval by EPA, shall be incorporated into and become enforceable under this Order. At the same time as they submit the Remedial Action Work Plan, Respondents shall submit to EPA and the State a Construction Health and Safety Plan/Contingency Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Action Work Plan shall include plans and schedules for implementation of all remedial action tasks identified on the SOW, and shall be developed in conjunction with other deliverables identified in the SOW, including, but not limited to, the following items: (a) the schedule for completion of the Remedial Action; (b) the schedule for developing and submitting other required Remedial Action plans; (c) a Project Delivery Strategy; (d) a Construction Management Plan; and (e) a Construction Quality Assurance Plan.

3. Upon approval of the Remedial Action Work Plan, and the other deliverables to be developed in conjunction with the Remedial Action Work Plan as set forth in the SOW, by EPA, after a reasonable opportunity for review and comment by the State, Respondents shall implement the activities required under the Remedial Action Work Plan. Respondents shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIII (EPA Review of Submissions). Unless otherwise directed by EPA, Respondents shall not commence physical on-site activities for OUI prior to approval of the Remedial Action Work Plan and such other deliverables to be developed in conjunction with the Remedial Action Work Plan as set forth in the SOW.

4. Within 10 days after EPA approves the Remedial Action Work Plan, Respondents shall notify EPA in writing of the name, title, and qualifications of any construction contractor proposed to be used in carrying out work under this Order. With respect to any proposed construction contractor, Respondents shall demonstrate that the proposed construction contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed construction contractor's QMP. The QMP should be prepared in accordance with the specifications set forth in "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. If at any time Respondents propose to change the construction contractor, Respondents shall notify EPA immediately and shall obtain approval from EPA, as provided in this paragraph, before the new construction contractor performs any of the Work under this Order. If EPA disapproves of the selection of any contractor as the construction contractor, Respondents shall submit a list of contractors that would be acceptable to Respondents to EPA within 15 days after receipt of EPA's disapproval of the contractor previously selected. EPA will thereafter provide

written notice of the names of the contractors it approves, if any. Respondents may select any approved contractor from that notice and shall notify EPA of the name of the contractor selected within 10 days of EPA's designation of approved contractors.

I. Operation and Maintenance and Performance Monitoring – The Operation and Maintenance Plan shall be developed and submitted to EPA for review and approval in accordance with the SOW. Respondents shall also develop and submit the Performance Standards Verification Plan to EPA for review and approval in accordance with the SOW. Upon approval by EPA, Respondents shall implement the Operation and Maintenance Plan and the Performance Standards Verification Plan.

J. Performance Standards – The Work performed by Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards.

K. Warranties – Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards. Nothing in this Order, or in EPA's approval of the Remedial Design or Remedial Action Work Plan, or approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.

L. Notification of Off-Site Waste Shipment – All materials removed from the Site shall be disposed of or treated at a facility approved by the EPA Project Coordinator and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3), with the U.S. EPA "Off-Site Policy," 40 CFR § 300.440 (50 Fed. Reg. 49200, September 22, 1993), and with all other applicable Federal, State and local requirements. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the State will not exceed 10 cubic yards.

1. The notification shall be in writing, and shall include the following information, where available: (a) the name and location of the facility to which the hazardous substances are to be shipped; (b) the type and quantity of the hazardous substances to be shipped; (c) the expected schedule for the shipment of the hazardous substances; and (d) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Respondents following the award of the contract for Remedial Action construction. Respondents shall

provide all relevant information on the off-Site shipments as soon as practicable after the award of the contract and before the hazardous substances are actually shipped.

3. The contents of this provision shall not be considered to be approval of the off-Site shipment of materials from the Site where the ROD requires treatment and/or storage on-Site.

IX. CERTIFICATION OF COMPLETION

A. Within 30 days after Respondents conclude that the Remedial Action has been fully performed, and that the Performance Standards have been fully attained, Respondents shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondents and EPA. The pre-certification inspection shall be followed by a written Remedial Action Report submitted within 30 days of the inspection by a registered professional engineer and Respondents' Project Coordinator, certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the Remedial Action Report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondents in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondents shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondents that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondents that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondents' certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with Sections 104, 106, or 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, or 9607.

B. Within 30 days after Respondents conclude that all phases of the Work have been fully performed, Respondents shall submit to EPA a written report, by a registered professional engineer, certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA shall require such additional activities as may be necessary to complete the Work, or EPA may, based upon present knowledge and Respondents' certification to EPA, issue written notification to Respondents that the Work has been completed. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with Sections 104, 106, or 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, or 9607.

X. EPA PERIODIC REVIEW

Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Respondents shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under Section 121(c) of CERCLA. As a result of any review performed under this paragraph, Respondents may be required to perform additional response actions or to modify the Work previously performed.

XI. ADDITIONAL RESPONSE ACTIONS

A. EPA may determine that, in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to meet the Performance Standards or to protect human health and the environment. If EPA determines that additional response actions are necessary, EPA will notify Respondents and may require Respondents to submit a work plan for such additional response actions. EPA may also require Respondents to modify any plan, design, or other deliverable required by this Order, including any approved modifications. Respondents shall notify EPA of their intent to perform such additional response actions within seven (7) days after receipt of EPA's request for additional response actions.

B. Unless otherwise stated by EPA, not later than 30 days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondents shall submit a work plan for the additional response actions (Additional Response Action Plan) to EPA for review and approval. The plan shall conform to the applicable requirements of Sections VIII (Work to be Performed), XV (Quality Assurance Sampling and Data Analysis), and XVI (Compliance with Applicable Laws) as appropriate. Upon approval by EPA, the Additional Response Action Plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order as if fully set forth herein. Upon approval of the Additional Response Action Plan pursuant to the procedures set forth in Section XIII (EPA Review of Submissions), Respondents shall implement the Additional Response Action Plan according to the standards, specifications, and schedule in the approved Additional Response Action Plan.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

A. In the event of any action or occurrence after the effective date of this Order which causes or threatens to cause a release of Waste Material from the Site or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify EPA's Project Coordinator, or if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Respondents shall

notify the EPA Region 4 Duty Officer at (404) 562-8700. Respondents shall take such action in consultation with EPA's Project Coordinator and in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan and the Contingency Plan developed pursuant to the SOW. In the event that Respondents fail to take appropriate response action as required by this Section, and EPA takes that action instead, EPA reserves the right to pursue reimbursement of all EPA's costs attributable to the response action that are not inconsistent with the NCP.

B. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order any appropriate action necessary to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIII. EPA REVIEW OF SUBMISSIONS

A. Upon receipt of any plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA shall, in writing, either: (1) approve the submission; or (2) disapprove the submission, notifying Respondents of deficiencies. If such submission is disapproved, EPA shall either: (1) notify Respondents that EPA will assume the responsibility for modifying the submission to correct the deficiencies, including, if necessary, the underlying Work; or (2) direct Respondents to modify the submission and, if necessary, the underlying Work, to correct the deficiencies.

B. In the event of approval or modification by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified.

C. Upon receipt of a written notice of disapproval and directive for modification, Respondents shall, within 30 days or such other time as specified by EPA in its notice of disapproval and request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. If upon resubmission the plan, report, or item is not approved by EPA, Respondents shall be deemed to be in violation of this Order.

E. The provisions of this Order shall govern all proceedings regarding the Work performed pursuant to this Order. In the event of any inconsistency between this Order and any required deliverable submitted by Respondents, the inconsistency will be resolved in favor of this Order.

XIV. PROGRESS REPORTS

A. In addition to the other deliverables set forth in this Order, Respondents shall submit written monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the 10th day of each

month beginning 30 days following the effective date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice that Respondents have demonstrated, to EPA's satisfaction, that all of the terms of this Order, including any additional tasks which EPA has determined to be necessary, have been completed. In addition, EPA may request periodic briefings by Respondents to discuss the progress of the Work.

B. At a minimum, these progress reports shall: (1) describe the actions which have been taken to comply with this Order during the prior month; (2) include all results of sampling and tests and all other data received by Respondents and not previously submitted to EPA; (3) include all plans, reports, deliverables, and procedures completed under the work plans during the previous month; (4) describe all work planned for the next month, with schedules relating such work to the overall project schedule for remedial action completion; and (5) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to mitigate or address any actual or anticipated problems or delays.

C. Upon the occurrence of any event during performance of the Work or additional response actions which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, Respondents shall promptly orally notify the EPA Project Coordinator, or in the event of the unavailability of the EPA Project Coordinator, EPA's Alternate Project Coordinator, or in the event of the unavailability of EPA's Alternate Project Coordinator, the EPA Region 4 Duty Officer at (404) 562-8700, in addition to the reporting required by Section 103 of CERCLA, 42 U.S.C. § 9603. Within ten (10) days of the onset of such an event, Respondents shall furnish to the EPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Respondents shall submit a report setting forth all actions taken.

D. Respondents shall submit each year, within 30 days of the anniversary of the effective date of this Order, a summary report to EPA setting forth the status of the Work which shall at a minimum include a statement of tasks accomplished in the preceding year, a statement of tasks remaining to be accomplished, and a schedule for implementation of the remaining Work.

XV. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondents shall use the quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001, reissued May 2006) and "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), the "EPA Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual" (U.S. EPA Region 4, Environmental Services Division, February 1, 1991) and subsequent amendments to such guidelines as described in the US-EPA, Region 4, SEDS Field Branches Quality System and Technical Procedures (<http://www.epa.gov/region4/sesd/fbqstp/index.html>), while conducting all sample collection and analysis activities required herein by any plan. Prior to the commencement of any monitoring project under this Order, Respondents shall submit for approval by EPA a Quality

Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Respondents shall only use laboratories which have a documented quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995) and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) to meet the quality system requirements. Respondents shall ensure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondents in implementing this Order.

B. Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this Order, and shall submit these results in monthly progress reports as described in Section XIV (Progress Reports) of this Order.

C. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA, and/or its authorized representatives, of any samples collected by Respondents pursuant to the implementation of this Order. Respondents shall notify EPA not less than 14 days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

D. Respondents shall ensure that the laboratory(ies) utilized by Respondents for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QA/R-2 and QA/R-5. In addition, EPA may require Respondent to submit data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis by Respondents of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, the Solid Waste Disposal Act (SWDA), 42 U.S.C. §§ 6901 et seq., and any other applicable statutes or regulations.

XVI. COMPLIANCE WITH APPLICABLE LAWS

A. All actions by Respondents pursuant to this Order shall be performed in accordance with the requirements of all applicable or relevant and appropriate laws, as required by CERCLA and the NCP. The United States has determined that the activities contemplated by this Order are consistent with the NCP.

B. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any

portion of the Work requires a federal or state permit or approval under CERCLA and the NCP, Respondents shall submit on a timely basis applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

C. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

D. Respondents shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations. Respondents shall provide a certification to the United States that such provision has been included in their contracts and subcontracts, within 15 days of final execution of contracts for Remedial Design, Remedial Action, Operation and Maintenance, and Performance Monitoring work.

XVII. PROJECT COORDINATOR

A. Within 15 days after the effective date of this Order, Respondents shall designate a Project Coordinator and shall submit the name, address, and telephone number of the Project Coordinator to EPA. Respondents' Project Coordinator shall be responsible for overseeing the implementation of this Order. If Respondents wish to change their Project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

B. All communications, whether written or oral, from Respondents to EPA shall be directed to EPA's Project Coordinator or Alternate Project Coordinator who shall be a Remedial Project Manager (RPM) or On-Scene Coordinator (OSC). EPA's Project Coordinator is:

Luis E. Flores
Regional Project Manager
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, GA 30303
(404) 562-8807

EPA's Alternate Project Coordinator is:

Richard Campbell, Chief
Superfund Remedial Section
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street SW
Atlanta, GA 30303
(404) 562-8825

C. EPA has the unreviewable right to change its Project Coordinator or Alternative Project Coordinator. If EPA changes its Project Coordinator or Alternate Project Coordinator, EPA will inform Respondents in writing of the name, address, and telephone number of the new Project Coordinator or Alternate Project Coordinator.

D. EPA's Project Coordinator or Alternate Project Coordinator shall have the authority lawfully vested in a RPM and OSC by the NCP at 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action.

E. The absence of the EPA Project Coordinator from the Site shall not be cause for stoppage or delay of Work.

XVIII. ACCESS AND INSTITUTIONAL CONTROLS

A If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by Respondents:

1. such Respondents shall, commencing on the effective date of this Order, provide EPA and the other Respondents, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Order including, but not limited to, the following activities:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to EPA;
- c. Conducting investigations regarding contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Assessing implementation of quality assurance and quality control practices as defined in the approved Construction Quality Assurance Plan;
- g. Implementing the Work pursuant to the conditions set forth in Section XXII (Work Takeover);
- h. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondents or their agents, consistent with Section XIX (Access to Information and Data/Document Availability);
- i. Assessing Respondents' compliance with the Order;

j. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Order;

k. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls; and

l. Conducting community relations activities.

2. commencing on the effective date of this Order, such Respondents shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or O&M; and

3. if required by EPA, such Respondents shall:

a. execute and record in the appropriate land records office Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Order including, but not limited to, those activities listed in Section XVIII(A)(1); and (ii) grant the right to enforce the land/water use restrictions set forth in Section XVIII(A)(2). The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) the other Respondents and their representatives; and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a third-party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to any Respondents pursuant to this Section XVIII(A)(3)(a), then such Respondents shall monitor, maintain, report on, and enforce such Proprietary Controls.

b. within 30 days after request by EPA, submit to EPA for review and approval regarding such real property: (i) draft Proprietary Controls that are enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, that shows title to the land affected by the Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

c. within 15 days after EPA's approval and acceptance of the Proprietary Controls and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Controls with the

appropriate land records office. Within 30 days after recording the Proprietary Controls, such Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls are to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

B. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Respondent:

1. Respondents shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for EPA and Respondents, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Order including, but not limited to, the activities listed in Section XVIII(A)(1);

b. if required by EPA, an agreement, enforceable by Respondents and EPA, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action; and

c. if required by EPA, the execution and recordation in the appropriate land records office of Proprietary Controls, that (i) grant a right of access to conduct any activity regarding the Order including, but not limited to, those activities listed in Section XVIII(A)(1), and (ii) grant the right to enforce the land/water use restrictions set forth in Section XVIII(A)(2). The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Respondents and their representatives, and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a third party beneficiary, allowing EPA to maintain the right to enforce the Proprietary Controls without acquiring an interest in real property. If any Proprietary Controls are granted to any Respondents pursuant to this Section XVIII(B)(1)(c), then such Respondents shall monitor, maintain, report on, and enforce such Proprietary Controls.

2 Within 30 days after request by EPA, Respondents shall submit to EPA for review and approval regarding such property: (i) draft Proprietary Controls that are enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, that shows title to the land affected by the

Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

3. Within 15 days of EPA's approval and acceptance of the Proprietary Controls and the title evidence, Respondents shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Proprietary Controls with the appropriate land records office. Within 30 days after the recording of the Proprietary Controls, Respondents shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Controls showing the clerk's recording stamps. If the Proprietary Controls are to be conveyed to the United States, the Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

C. For purposes of Paragraphs XVIII(A)(3)(b), XVIII(B)(1) and XVIII(B)(2), "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, Proprietary Controls, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 30 days after EPA's request for Proprietary Controls, Respondents have not: (a) obtained agreements to provide access, restrict land/water use, or record Proprietary Controls, as required by Section XVIII(B)(1)(a), XVIII(B)(1)(b), or XVIII(B)(1)(c); or (b) obtained, pursuant to XVIII(A)(3)(b) or XVIII(B)(2), agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Proprietary Controls, Respondents shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Respondents have taken to attempt to comply with Section XVIII(A) or XVIII(B). EPA may, as it deems appropriate, assist Respondents in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Respondents shall reimburse EPA under Section XXIV (Reimbursement of Response Costs) for all costs incurred, direct or indirect, by EPA in obtaining such access, agreements to restrict land/water use, Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

D. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Respondents shall cooperate with EPA's efforts to secure and ensure compliance with such governmental controls.

E. Notwithstanding any provision of the Order, EPA retains all of its access authorities and rights, as well as all of its rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIX. ACCESS TO INFORMATION AND DATA/DOCUMENT AVAILABILITY

A. Respondents shall provide to EPA and its authorized representatives, upon request, access to inspect and/or copy all documents and information in their possession and/or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including all files, records, documents, photographs, sampling and analysis records, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information relating to remedial activities and other Work required under the Order.

B. Respondents may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and shall be substantiated by Respondents at the time the assertion is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no claim of confidentiality accompanies specific documents or information when they are submitted to EPA, or if EPA has notified the Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA and 40 C.F.R. § 2.203(b), the public may be given access to such documents or information by EPA or the State without further notice to Respondents.

C. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

D. Respondents shall maintain, for the period during which this Order is in effect, an index of documents that Respondents claim contain privileged information or confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

XX. RECORD PRESERVATION

A. Respondents shall provide to EPA, upon request, copies of all documents and information within, or which come within, their possession and/or control or the control of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondents shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

B. Until EPA provides written notification that the Work has been completed pursuant to Section IX (Certification of Completion), Respondents shall preserve and retain, and shall instruct their contractors and agents to preserve and retain, all documents, records, and information of whatever kind, nature, or description relating to the performance of the Work.

C. All records and documents in Respondents' possession at any time prior to termination of this Order, that relate in any way to the Site shall be preserved and retained by Respondents for a minimum of 10 years after EPA provides written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed. Respondents shall acquire and retain copies of all documents that relate to the Site and that are in the possession of their employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondents shall notify EPA at least 90 days before the documents are scheduled to be destroyed and, upon request of EPA, shall deliver said records or documents to EPA at no cost.

D. EPA has the discretion to request that all records and documents be retained for a longer period of time by Respondents.

E. Within 30 days after the effective date of this Order, Respondents shall submit a written certification to EPA's Project Coordinator that they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to their potential liability with regard to the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site. Respondents shall not dispose of any such documents without prior approval by EPA. Respondents shall, upon EPA's request and at no cost to EPA, deliver the documents or copies of the documents to EPA.

XXI. DELAY IN PERFORMANCE

A. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this paragraph shall be considered a violation of this Order. No delay in performance of this Order shall affect Respondents' obligations to fully perform all obligations under the terms and conditions of this Order.

B. Respondents shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification shall be made by telephone to EPA's Project Coordinator or Alternate Project Coordinator within 48 hours after Respondents first knew or should have known that an event might cause a delay. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, the reasons the delay is beyond the control of Respondents, any defenses under Section 106(b)(1), 42 U.S.C. § 9606(b)(1), available to Respondents for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Financial inability to perform the Work, increased costs or expenses associated with

implementation of the activities required by this Order, or failure to attain the Performance Standards shall not be considered circumstances beyond the control of Respondents.

XXII. WORK TAKEOVER

A. In the event EPA determines that Respondents have: (1) ceased implementation of any portion of the Work, or (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondents. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondents a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

B. If, after expiration of the ten-day notice period specified in Section XXII(A), Respondents have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Respondents in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Section XXII(B). Funding of Work Takeover costs is addressed under Section XXIII(E).

C. EPA may in its sole discretion commence and continue a Work Takeover under Section XXII(B) until the date that Respondents remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice.

D. Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. PERFORMANCE GUARANTEE AND INSURANCE

A. In order to ensure the full and final completion of the Work, Respondents shall establish and maintain a performance guarantee, initially in the amount of \$6,130,000, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA and written in substantial compliance with the wording specified in 40 C.F.R. § 264.151, shall be in the form of one or more of the following mechanisms (provided that, if Respondents intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

1. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

2. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (a) that has the authority to issue letters of credit and

(b) whose letter-of-credit operations are regulated and examined by a federal or state agency;

3. A trust fund established for the benefit of EPA that is administered by a trustee (a) that has the authority to act as a trustee and (b) whose trust operations are regulated and examined by a federal or state agency;

4. A policy of insurance that (a) provides EPA with acceptable rights as a beneficiary thereof and (b) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency;

5. A demonstration by one or more Respondents that each such Respondent meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

6. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (a) a direct or indirect parent company of a Respondent or (b) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Respondent; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

B. Within 30 days after the effective date of this Order, Respondents shall submit copies of all executed and/or otherwise finalized instruments or other documents required, which shall be in a form substantially identical to the sample documents provided at <http://www.epa.gov/compliance/cleanup/superfund/negotiate-fa.html>, to Paula V. Painter, Environmental Protection Specialist, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, with a copy to Debbie Jourdan, Superfund Records Manager, EPA Region 4, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, and to EPA as specified in Section XVII(B).

C. If Respondents provide a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Section XXIII(A)(5) or Section XXIII(A)(6) above, the relevant Respondents shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Order, including but not limited to: (1) the initial submission of required financial reports and statements from the relevant entity's chief financial officer (CFO) and independent certified public accountant (CPA), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test->

samples.pdf; (2) the annual resubmission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (3) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XXIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to each Respondent making a demonstration under Section XXIII(A)(5); and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

D. Respondents shall diligently monitor the adequacy of the performance guarantee. In the event that EPA determines or Respondents become aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Respondents shall immediately notify EPA of the inadequacy and, within 30 days after providing to or receiving such notice from EPA, obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee that satisfies all requirements set forth in this Section.

E. The commencement of any Work Takeover pursuant to Section XXII shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to this Section, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (1) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (2) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Section XXIII(A)(5) or Section XXIII(A)(6), Respondents (or in the case of Section XXIII(A)(6), the guarantor) shall immediately upon written demand from EPA deposit into an account, specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. All EPA Work Takeover costs not reimbursed under this paragraph shall be reimbursed under Section XXIV (Reimbursement of Response Costs). In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Respondents provide a substitute performance guarantee mechanism in accordance with this Section XXIII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee.

F. Respondents shall not reduce the amount of, or change the form or terms of, the performance guarantee until Respondents receive written approval from EPA to do so. Respondents may petition EPA in writing to request such a reduction or change on any anniversary of the effective date, or at any other time agreed to by the Parties. Any such petition shall include the estimated cost of the remaining Work and the basis upon which such cost was calculated, and, for proposed changes to the form or terms of the performance guarantee, the proposed revision(s) to the form or terms of the performance guarantee. Any decision made by EPA on a petition submitted under this paragraph shall be made in EPA's sole and unreviewable discretion. If EPA notifies Respondents that it has approved the requested reduction or change, Respondents may reduce or otherwise change the performance guarantee within 30 days of receipt of EPA's written decision and shall submit all documents evidencing such reduction or change to EPA in accordance with Section XXIII(B) above.

G. Respondents shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section until (1) Respondents receive written notice from EPA that the Work has been fully and finally completed in accordance with the terms of this Order or (2) EPA otherwise notifies Respondents in writing that they may release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section.

H. No later than 10 days prior to commencing any Work at the Site pursuant to this Order, Respondents shall secure, and shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, comprehensive general liability insurance with a combined single limit of at least \$5,000,000 naming the United States as an additional insured. No later than 15 days after the effective date of this Order, Respondents shall secure, and shall maintain until the fifth anniversary of EPA's written notification, pursuant to Section IX (Certification of Completion) of this Order, that the Work has been completed, automobile liability insurance with limits of \$500,000 naming the United States as an additional insured. In addition, Respondents shall submit to EPA a certification that their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order. Prior to commencement of the Work under this Order, Respondents shall provide to EPA certificates of such insurance and copies of the insurance policies. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Respondents need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

I. For the duration of this Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of workers' compensation insurance for all persons performing work on behalf of Respondents in furtherance of this Order.

XXIV. REIMBURSEMENT OF RESPONSE COSTS

A. EPA reserves the right to demand that Respondents reimburse EPA for all response costs incurred by the United States, including those costs incurred in overseeing Respondents' implementation of the requirements of this Order or in performing any response action which Respondents fail to perform pursuant to this Order. EPA may submit to Respondents, on a periodic basis, an accounting of all response costs incurred by the United States with respect to this Order. Response costs may include, but are not limited to, costs incurred by the United States in overseeing Respondents' implementation of the requirements of this Order and in performing activities as part of the RD/RA and community relations, including any costs incurred while obtaining access for Respondents. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of RD/RA activities, Site visits, discussions regarding disputes that may arise as a result of this Order, review and approval or disapproval of reports, and costs of performing any Work which Respondents failed to perform pursuant to this Order. EPA's certified Agency Financial Management System summary data (SCORPIOS Reports), or such other data summary as certified by EPA, shall serve as the basis for payment demands.

B. EPA's demand for payment shall request that Respondents, within 30 days of receipt of each EPA accounting, remit a certified or cashier's check for the amount of those costs. Interest shall accrue from the latter of the date that payment of a specified amount is demanded in writing, or the date of the expenditure.

C. Checks shall be made payable to the "EPA Hazardous Substances Superfund" and shall include the name of the Site, the Site identification number, the account number and the title of this Order. Checks shall be forwarded to:

U.S. Environmental Protection Agency
Superfund Payments – Region 4
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

D. Respondents shall send copies of each transmittal letter and check to the Paula V. Painter, Environmental Protection Specialist, 61 Forsyth Street, SW, Atlanta, Georgia, 30303.

XXV. UNITED STATES NOT LIABLE

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be

deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVI. ENFORCEMENT AND RESERVATIONS

A. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any past or future response costs incurred by the United States related to this Site and not previously reimbursed by Respondents. This reservation shall include, but not be limited to, past costs, direct costs, indirect costs, the costs of oversight, the costs of compiling the cost documentation to support an oversight cost demand, as well as accrual of Interest.

B. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondents for its costs, or seek any other appropriate relief.

C. Nothing herein shall preclude EPA from continuing any existing enforcement actions and/or taking any additional enforcement actions, including modification of this Order or issuance of additional orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondents in the future to perform additional activities pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), et seq., or any other applicable law, or from seeking judicial enforcement of this Order. Respondents shall be liable under CERCLA Section 107(a), 42 U.S.C. § 9607(a), for the costs of any such additional actions.

D. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statutes or regulations.

E. Pursuant to 40 C.F.R. 19.4, Respondents shall be subject to civil penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$37,500 for each day in which a violation of this Order occurs or such failure to comply continues. Failure to comply with this Order, or any portion hereof, without sufficient cause, may result in liability under Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund (as defined in CERCLA), as a result of such failure to take proper action.

F. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary, or corporation for any liability it may have arising out of or relating in any way to the Site.

XXVII. ADMINISTRATIVE RECORD

Upon request by EPA, Respondents must submit to EPA all documents related to the selection of the response action for possible inclusion in the administrative record file.

XXVIII. EFFECTIVE DATE AND COMPUTATION OF TIME

This Order shall be effective 30 days after the Order is signed by the Superfund Division Director, Region 4. All times for performance of ordered activities shall be calculated from this effective date. When computing any period of time under this Order, if the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the close of the next working day.

XXIX. OPPORTUNITY TO CONFER

A. Respondents may, within 10 days after the date this Order is signed by the Superfund Division Director, Region 4, make a written or oral request for a conference with EPA Region 4 to discuss this Order. If requested, the conference shall occur at EPA Region 4 at 61 Forsyth Street SW, Atlanta, Georgia 30303. All telephone communications regarding a conference should be directed to Matthew Hicks, Associate Regional Counsel, at (404) 562-9670. All electronic communications regarding a conference should be directed to Matthew Hicks, Associate Regional Counsel, at hicks.matthew@epa.gov. The written request for a conference may be delivered to EPA by some means of personal delivery other than certified mail.

B. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondents intend to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by attorneys or other representatives.

XXX. NOTICE OF INTENT TO COMPLY

Respondents shall provide, not later than five (5) days after the effective date of this Order, written or verbal notice to EPA's Project Coordinator stating unequivocally whether they will comply with the terms of this Order. Any verbal notice must be confirmed in writing within two (2) days of the giving of such verbal notice. A written notice of intent (or written confirmation, as the case may be) may be delivered to EPA by some means of personal delivery other than certified mail. If Respondents do not provide notice within five (5) days as specified above, or if Respondents provide notice which does not state unequivocally that Respondents will comply with the terms of this Order, then Respondents shall be deemed to have refused to comply with this Order and to have violated this Order. The written notice or written confirmation required by this paragraph shall set forth, using facts that exist on or prior to the effective date of this

Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this paragraph shall not be deemed to be an acceptance of Respondents' assertions.

XXXI. MODIFICATION

No material modifications shall be made to this Order without written request to and written approval of EPA. The request for modification required by this Section shall set forth the nature of and reasons for the requested modification. No oral modification of this Order shall be effective. Modifications that do not materially alter the requirements of this Order, such as minor schedule changes, may be made upon the written approval of EPA. Nothing in this paragraph shall be deemed to alter EPA's authority to supervise and modify this Order.

So Ordered, this ²⁹~~27~~ day of September, 2011.

By: 

Franklin E. Hill, Director
Superfund Division

U.S. Environmental Protection Agency

Appendix 1

Record of Decision for OU1

(see attached compact disk)

Appendix 2

Statement of Work

(see attached compact disk)

Appendix 3

Site Map

(see attached compact disk)

Appendix 4

Respondents

1. Broad River Electric Cooperative
2. Carr & Duff, Inc.
3. Chemetals, Inc., a/k/a Erachem Comilog, Inc.
4. City of Dover
5. E.E. Corporation of VA, a/k/a Electric Equipment Company of VA
6. EPS, a/k/a Environmental Protection Service, Inc.
7. Four County Electric Membership Corporation
8. G & S Electric Motors, a/k/a G & S Motor Equipment Co., Inc.
9. Georgia Power
10. National Roll
11. North Georgia EMC
12. RCA, n/k/a General Electric
13. Reward Properties, LLC
14. Reward Statesville, LLC
15. SMI Steel (Caycee, SC)
16. Southern Maryland Electric Co-op.
17. Tennessee Electro Minerals
18. UNC Chapel Hill
19. Union Carbide (Dow Chemicals)
20. Vepco, a/k/a Virginia Electric and Power Company
21. Ward Transformer Company, Inc.
22. Ward Transformer Sales and Service, Inc.
23. Ward Ventures, LLC